



INTERIOR BOARD OF INDIAN APPEALS

Wayne Ducheneaux v. Great Plains Regional Director, Bureau of Indian Affairs

38 IBIA 237 (12/05/2002)

Reconsideration denied:
38 IBIA 273



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

WAYNE DUCHENEAUX,
Appellant

v.

GREAT PLAINS REGIONAL DIRECTOR,
BUREAU OF INDIAN AFFAIRS,
Appellee

: Order Docketing and Dismissing
: Appeal
:
:
: Docket No. IBIA 03-35-A
:
:
: December 5, 2002

The Acting Great Plains Regional Director, Bureau of Indian Affairs, has furnished the Board of Indian Appeals with a copy of a November 7, 2001, notice of appeal from Wayne Ducheneaux (Appellant). The notice of appeal is addressed to the Great Plains Regional Director and challenges a decision issued by her on October 23, 2001. The Acting Regional Director has also furnished the Board with copies of the Regional Director's October 23, 2001, decision and a November 25, 2002, letter from the Acting Regional Director to Appellant's representative, responding to an inquiry about the matter. The documents were received by the Board on December 2, 2002.

For the reasons discussed below, the Board docketed this appeal but dismisses it as untimely.

The Regional Director's October 23, 2001, decision correctly informed Appellant that any appeal must be filed with the Board and included the Board's then-correct address. ^{1/} However, Appellant did not file his notice of appeal with the Board. Nor did he send the Board a copy of the notice of appeal he filed with the Regional Director. The Board first became aware of the appeal when it received the documents transmitted by the Acting Regional Director.

The Board has consistently held that a notice of appeal is not timely when the appellant has been given correct appeal information but files a notice of appeal with an official other than the Board, resulting in receipt of the notice of appeal by the Board outside the time period specified in the regulations. See, e.g., Schaffer v. Aberdeen Area Director, 33 IBIA 255 (1999), and cases cited therein.

^{1/} The Board moved to its present address in February 2002.

The Regional Director should have forwarded the misfiled notice of appeal to the Board earlier. See 25 C.F.R. § 2.13(b). However, an appellant who ignores explicit appeal instructions and files his notice of appeal in the wrong office must bear the risk of delays in transmitting his notice of appeal to the Board. E.g., Reeves v. Anadarko Area Director, 25 IBIA 40 (1993), and cases cited therein.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is docketed but is dismissed as untimely.

//original signed

Anita Vogt
Administrative Judge

//original signed

Kathryn A. Lynn
Chief Administrative Judge